

than an agency being considered for funds. The order of agency assignment to the Committee will be published in a TFM Bulletin, when funds are first deposited to the Fund. Decisions of the project selection and approval committee cannot be appealed. Agencies will be notified of any available amounts in the Fund and requirements to apply for such monies through a TFM bulletin.

(c) As provided by 31 U.S.C. 3720, sums in the Fund will be available without fiscal year limitation for the payment of expenses incurred in developing improved methods of collection and deposit and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

(d) In addition to all reports required by law and regulation, for each fiscal year during which there is a balance in Fund, the Service will prepare and publish, by the 60th day following the close of the fiscal year, a full report on payments, receipts, disbursements, balances of the Fund, and full disclosure on projects financed by the Fund.

PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

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AUTHORITY: 5 U.S.C. 301; 12 U.S.C. 90, 265, 266, 1767, 1789a; 31 U.S.C. 321, 3122, 3301, 3302, 3303, 3321, 3325, 3327, 3328, 3332, 3335, 3336, 6503; Pub. L. 104–208, 110 Stat. 3009.

SOURCE: 63 FR 51502, Sept. 25, 1998, unless otherwise noted.

§ 208.1 Scope and application.

This part applies to all Federal payments made by an agency and, except as specified in § 208.4, requires such payments to be made by electronic

funds transfer. This part does not apply to payments under the Internal Revenue Code of 1986 (26 U.S.C.).

§ 208.2 Definitions.

(a) *Agency* means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States.

(b) *Authorized payment agent* means any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or other agency making Federal payments, to act on behalf of an individual entitled to a Federal payment.

(c) *Direct Express[®] card* means the prepaid debit card issued to recipients of Federal benefits by a Financial Agent pursuant to requirements established by Treasury.

(d) *Disbursement* means, in the context of electronic benefits transfer, the performance of the following duties by a Financial Agent acting as agent of the United States:

(1) The establishment of an account for the recipient that meets the requirements of the Federal Deposit Insurance Corporation or the National Credit Union Administration Board for deposit or share insurance;

(2) The maintenance of such an account;

(3) The receipt of Federal payments through the Automated Clearing House system or other electronic means and crediting of Federal payments to the account; and

(4) The provision of access to funds in the account on the terms specified by Treasury.

(e) *Electronic benefits transfer (EBT)* means the provision of Federal benefit, wage, salary, and retirement payments electronically, through disbursement by a financial institution acting as a Financial Agent. For purposes of this part, EBT includes, but is not limited to, disbursement through an ETASM, a Federal/State EBT program, or a Direct Express[®] card account.

(f) *Electronic funds transfer* means any transfer of funds, other than a transaction originated by cash, check, or

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similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, Automated Clearing House transfers, Fedwire transfers, and transfers made at automated teller machines and point-of-sale terminals. For purposes of this part only, the term electronic funds transfer includes a credit card transaction.

(g) *ETASM* means the Treasury-designated electronic transfer account made available by a Federally-insured financial institution acting as a Financial Agent in accordance with §208.5 of this part.

(h) *Federal payment* means any payment made by an agency.

(1) The term includes, but is not limited to:

(i) Federal wage, salary, and retirement payments;

(ii) Vendor and expense reimbursement payments;

(iii) Benefit payments; and

(iv) Miscellaneous payments including, but not limited to: interagency payments; grants; loans; fees; principal, interest, and other payments related to U.S. marketable and non-marketable securities; overpayment reimbursements; and payments under Federal insurance or guarantee programs for loans.

(2) For purposes of this part only, the term “Federal payment” does not apply to payments under the Internal Revenue Code of 1986 (26 U.S.C.).

(i) *Federal/State EBT program* means any program that provides access to Federal benefit, wage, salary, and retirement payments and to State-administered benefits through a single delivery system and in which Treasury designates a Financial Agent to disburse the Federal payments.

(j) *Federally-insured financial institution* means any financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation under 12 U.S.C. Chapter 16 or, in the case of a credit union, the member accounts of which are insured by the National Credit Union Share Insurance

Fund under 12 U.S.C. Chapter 14, Subchapter II.

(k) *Financial Agent* means a financial institution that has been designated by Treasury as a Financial Agent for the provision of EBT services under any provision of Federal law, including 12 U.S.C. 90, 265, 266, 1767, and 1789a, and 31 U.S.C. 3122 and 3303, as amended by the Omnibus Consolidated Appropriations Act, 1997, Section 664, Public Law 104-208.

(1) *Financial institution* means:

(1) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution (as defined in such Act) (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(6) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

(m) *Individual* means a natural person.

(n) *Recipient* means an individual, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency.

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(o) *Secretary* means Secretary of the Treasury.

(p) *Treasury* means the United States Department of the Treasury.

[63 FR 51502, Sept. 25, 1998, as amended at 75 FR 80334, Dec. 22, 2010]

§ 208.3 Payment by electronic funds transfer.

Subject to § 208.4, and notwithstanding any other provision of law, effective January 2, 1999, all Federal payments made by an agency shall be made by electronic funds transfer.

§ 208.4 Waivers.

(a) Payment by electronic funds transfer is not required in the following cases:

(1) Where an individual:

(i) Is receiving a Federal payment by check prior to May 1, 2011. In such cases, the individual may continue to receive those payments by check through February 28, 2013;

(ii) Files a claim for a Federal payment prior to May 1, 2011, and requests payment by check at the time he or she files the claim. In such cases, the individual may receive those payments by check through February 28, 2013;

(iii) Was born prior to May 1, 1921, and is receiving payment by check on March 1, 2013;

(iv) Receives a type of payment that is not eligible for deposit to a Direct Express® card account. In such cases, those payments are not required to be made by electronic funds transfer, unless and until such payments become eligible for deposit to a Direct Express® card account;

(v) Is ineligible for a Direct Express® card because of suspension or cancellation of the individual's card by the Financial Agent;

(vi) Has filed a waiver request with Treasury certifying that payment by electronic funds transfer would impose a hardship because of the individual's inability to manage an account at a financial institution or a Direct Express® card account due to a mental impairment, and Treasury has not rejected the request; or

(vii) Has filed a waiver request with Treasury certifying that payment by electronic funds transfer would impose a hardship because of the individual's

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inability to manage an account at a financial institution or a Direct Express® card account due to the individual living in a remote geographic location lacking the infrastructure to support electronic financial transactions, and Treasury has not rejected the request.

(2) Where the political, financial, or communications infrastructure in a foreign country does not support payment by electronic funds transfer;

(3) Where the payment is to a recipient within an area designated by the President or an authorized agency administrator as a disaster area. This waiver is limited to payments made within 120 days after the disaster is declared;

(4) Where either:

(i) A military operation is designated by the Secretary of Defense in which uniformed services undertake military actions against an enemy, or

(ii) A call or order to, or retention on, active duty of members of the uniformed services is made during a war or national emergency declared by the President or Congress;

(5) Where a threat may be posed to national security, the life or physical safety of any individual may be endangered, or a law enforcement action may be compromised;

(6) Where the agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis and remittance data explaining the purpose of the payment is not readily available from the recipient's financial institution receiving the payment by electronic funds transfer; and

(7) Where an agency's need for goods and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than electronic funds transfer; or, where there is only one source for goods or services and the Government would be seriously injured unless payment is made by a method other than electronic funds transfer.

(b) An individual who requests a waiver under paragraphs (a)(1)(vi) and (vii) of this section shall provide, in writing, to Treasury a certification supporting that request, in such form

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that Treasury may prescribe. The individual shall attest to the certification before a notary public, or otherwise file the certification in such form that Treasury may prescribe.

[63 FR 51502, Sept. 25, 1998, as amended at 75 FR 80334, Dec. 22, 2010]

§ 208.5 Availability of the ETASM.

An individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an ETASM at any Federally-insured financial institution that offers ETAsSM. Any Federally-insured financial institution shall be eligible, but not required, to offer ETAsSM as Treasury's Financial Agent. A Federally-insured financial institution that elects to offer ETAsSM shall, upon entering into an ETASM Financial Agency Agreement with the Treasury, be designated as Treasury's Financial Agent for the offering of the account pursuant to Public Law 104-208. Treasury shall make publicly available required attributes for ETAsSM and any ETASM offered by a Federally-insured financial institution shall comply with such requirements. The offering of an ETASM shall constitute the provision of EBT services within the meaning of Public Law 104-208.

§ 208.6 Availability of the Direct Express[®] Card.

An individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open a Direct Express[®] card account. The offering of a Direct Express[®] card account shall constitute the provision of EBT services within the meaning of Public Law 104-208.

[75 FR 80335, Dec. 22, 2010]

§ 208.7 Agency responsibilities.

An agency shall put into place procedures that allow recipients to provide the information necessary for the delivery of payments to the recipient by electronic funds transfer to an account at the recipient's financial institution or a Direct Express[®] card account.

[75 FR 80335, Dec. 22, 2010]

§ 208.8 Recipient responsibilities.

Each recipient who is required to receive payment by electronic funds transfer shall provide the information necessary to effect payment by electronic funds transfer.

[75 FR 80335, Dec. 22, 2010]

§ 208.9 Compliance.

(a) Treasury will monitor agencies' compliance with this part. Treasury may require agencies to provide information about their progress in converting payments to electronic funds transfer.

(b) If an agency fails to make payment by electronic funds transfer, as prescribed under this part, Treasury may assess a charge to the agency pursuant to 31 U.S.C. 3335.

§ 208.10 Reservation of rights.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of this regulation in any case or class of cases.

§ 208.11 Accounts for disaster victims.

Treasury may establish and administer accounts at any financial institution designated as a financial agent for disaster victims in order to allow for the delivery by electronic funds transfer of one or more Federal payments. Such accounts may be established upon terms and conditions that the Secretary considers appropriate or necessary in light of the circumstances. Treasury may deliver payments to these accounts notwithstanding any other payment instructions from the recipient and without regard to the requirements of §§ 208.4 and 208.7 of this part and § 210.5 of this chapter. For purposes of this section, "disaster victim" means an individual or entity located within an emergency area, or an individual or entity that has relocated or been displaced from an emergency area as a result of a major disaster or emergency. "Emergency area" means a geographical area in which there exists an emergency or disaster declared by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). The maintenance of

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accounts and the provision of account-related services under this section shall constitute reasonable duties of a financial agent of the United States.

[71 FR 44585, Aug. 7, 2006, as amended at 75 FR 80335, Dec. 22, 2010]

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

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AUTHORITY: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

SOURCE: 64 FR 17487, Apr. 9, 1999, unless otherwise noted.

§ 210.1 Scope; relation to other regulations.

This part governs all entries and entry data originated or received by an agency through the Automated Clearing House (ACH) network, except as provided in paragraphs (a) and (b) of this section. This part also governs reclamations of benefit payments.

(a) Federal tax payments received by the Federal Government through the ACH system that are governed by part 203 of this title shall not be subject to any provision of this part that is inconsistent with part 203.

(b) ACH credit or debit entries for the purchase of, or payment of principal and interest on, United States securities that are governed by part 370 of this title shall not be subject to any

provision of this part that is inconsistent with part 370.

§ 210.2 Definitions.

For purposes of this part, the following definitions apply. Any term that is not defined in this part shall have the meaning set forth in the ACH Rules.

(a) *ACH Rules* means the Operating Rules and the Operating Guidelines published by NACHA—The Electronic Payments Association (NACHA), a national association of regional member clearing house associations, ACH Operators and participating financial institutions located in the United States.

(b) *Actual or constructive knowledge*, when used in reference to an RDFI's knowledge of the death or legal incapacity of a recipient or death of a beneficiary, means that the RDFI received information, by whatever means, of the death or incapacity and has had a reasonable opportunity to act on such information or that the RDFI would have learned of the death or incapacity if it had followed commercially reasonable business practices.

(c) *Agency* means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States. The term agency does not include a Federal Reserve Bank.

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before March 16, 2018, as published in “2016 NACHA Operating Rules & Guidelines: A Complete Guide to Rules Governing the ACH Network” (incorporated by reference, see § 210.3(b)) except:

(1) Subsections 1.2.2, 1.2.3, 1.2.4, 1.2.5 and 1.2.6; Appendix Seven; Appendix Eight; Appendix Nine and Appendix Ten (governing the enforcement of the ACH Rules, including self-audit requirements, and claims for compensation);

(2) Section 2.10 and Section 3.6 (governing the reclamation of benefit payments);

(3) The requirement in Appendix Three that the Effective Entry Date of a credit entry be no more than two Banking Days following the date of